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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/695,016	10/23/2000	Peter E. Blackshaw	PLNTP003	3308
30074	7590	05/19/2005	EXAMINER	
TAFT, STETTINIUS & HOLLISTER LLP SUITE 1800 425 WALNUT STREET CINCINNATI, OH 45202-3957			COLON, CATHERINE M	
			ART UNIT	PAPER NUMBER
			3623	

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/695,016

Applicant(s)

BLACKSHAW ET AL.

Examiner

C. Michelle Colon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-58 is/are pending in the application.
- 4a) Of the above claim(s) 1,3-15,28-54 and 56-58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-27 and 55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. The following is a Non-Final Office Action in response to the communication received on February 23, 2005. Claims 1 and 3-58 were restricted in the previous Office Action. Claims 16-27 and 55 were provisionally elected with traverse. Applicant is reminded to cancel claims 1, 3-15, 28-54 and 56-58 in response to this Office Action.

Accordingly, claims 16-27 and 55 are now pending in this application.

Response to Election with Traverse

2. In the Remarks, Applicant elected with traverse Group II, which consists of claims 16-27 and 55. Applicant argued that since the classification is the same for all of the groups, the restriction is improper.

In response to the argument, Examiner respectfully disagrees. Applicant is reminded that a restriction is also proper when the searches required for one group of claims are not required for the other group(s) of claims. Thus, while all of the claims of the instant application lie within the broad classification of "market analysis," each group contains specific and unique search requirements as discussed in the Restriction Requirement of the previous Office Action. For example, Group II requires a search specific to obtaining ratings from consumers, whereas none of the claims in Group I recites obtaining ratings from consumers.

Accordingly, Examiner respectfully maintains the restriction is proper.

Response to Amendment

3. Based on Applicant's remarks that the steps of the method are implemented by or with a computer or computerized device and that technology is called upon to carry out the steps in a non-trivial way, Applicant's amendments are sufficient to overcome the 35 U.S.C. 101 technological arts rejection set forth in the Office Action mailed July 21, 2004. Therefore, the 35 U.S.C. 101 technological arts rejection of claims 16-26 and 55 (the elected claims) is withdrawn.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 27 recites, "at least one of the processor and the memory being adapted for," which makes the scope of the claim unclear since it seems that the limitation is saying that *either* the memory *or* the processor performs the steps. It is unclear if a memory can actually perform the recited functionality.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 16-20, 27 and 55 are rejected under 35 U.S.C. 102(a,e) as being anticipated by Klingman (U.S. 5,950,172).

As per claims 16, 27 and 55, Klingman discloses a computer implemented method, system and computer readable medium storing thereon computer readable instructions for collecting data associated with a consumer, comprising:

(a) a computer-implemented step of selecting a business to which a consumer feedback communication is to be directed (col. 6, lines 56-58; col. 9, lines 10-14 and 41-49; col. 16, lines 33-37; col. 19, lines 1 and 57-64; Figure 4; A consumer purchases a product at a merchant's website. Thus, by linking to the merchant's website, a consumer is selecting a merchant, or business. After purchasing a product, the consumer provides feedback to the merchant by selecting a "score" button on the merchant's website.);

(b) a computer-implemented step of obtaining one or more ratings relating to the business from the consumer (col. 9, lines 30-32; Figure 5; A consumer selects a “score” button to provide ratings for a product.);

(c) a computer-implemented step of composing a consumer feedback communication using the obtained ratings (col. 11, lines 32-50; col. 18, lines 3-7; Figures 5 and 6; The ratings are composed using a graphical interface and then summarized and displayed in graphical formats.); and

(d) a computer-implemented step of creating one or more indices from the obtained ratings, the one or more indices categorizing the consumer according to the obtained ratings (col. 12, lines 1-17 and 44-47; Figure 6; Consumers are categorized according to their ratings.).

As per claim 17, Klingman discloses the method as recited in claim 16, further comprising:

repeating steps (a), (b), and (c) for one or more consumer feedback communications directed to one or more businesses within an industry (col. 16, lines 33-41; Figure 5; Consumers may provide ratings for a number of businesses they have purchased products from as long as the businesses provide the rating feature on their websites.).

As per claim 18, Klingman discloses the method as recited in claim 17, wherein (d) creating one or more indices is performed for the one or more consumer feedback communications such that a single set of indices is associated with the consumer (col. 12, lines 1-17 and 44-47; Figure 6; Consumers are categorized according to their

ratings. Items 156, 158 and 160 along the x-axis in Figure 6 indicate the number of consumers that have provided the corresponding rating along the y-axis.).

As per claim 19, Klingman discloses the method as recited in claim 16, further comprising: (e) transmitting the consumer feedback communication to the business (col. 10, lines 17-20; col. 16, lines 28-37; col. 22, lines 63-67; Figure 3; Consumers provide feedback to the merchant via the merchant's website. The scores may be "pushed" or "pulled" by the merchant depending on the arrangement of the merchant's system.).

As per claim 20, Klingman discloses the method as recited in claim 19, further comprising: repeating steps (a), (b), (c), and (e) for one or more consumer feedback communications directed to one or more businesses within an industry (col. 10, lines 17-20; col. 16, lines 28-37; col. 22, lines 63-67; Figure 3; Consumers provide feedback to the merchant via the merchant's website. The scores may be "pushed" or "pulled" by the merchant depending on the arrangement of the merchant's system.).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klingman (U.S. 5,950,172) as applied to claim 16 above.

As per claims 21 and 22, Klingman discloses the method as recited in claim 16, wherein the obtained ratings include a satisfaction rating (col. 9, lines 10-14) and wherein consumers are categorized according to their ratings (col. 12, lines 44-47). Additionally, Klingman does correspond ranges of values to consumers' sentiments (i.e., a score in the 10's indicates a low satisfaction), where the ranges of values may equate to indices (col. 12, lines 1-8). Klingman does not expressly disclose a future purchase intent, and future word of mouth influence intent, wherein creating one or more indices from the obtained ratings comprises combining the satisfaction rating, the future purchase intent, and the future word of mouth influence intent to create a loyalty index indicating a level of loyalty of the consumer to the business. However, a consumer's satisfaction sentiment is related to their future purchase intent and future word of mouth influence in that if a customer is extremely satisfied with a product, they are more likely to purchase another product from the business in the future as well as be more likely to tell others about the product. Similarly, if a consumer is not satisfied with a product, they are more likely to not purchase another product from the business in the future and not tell others about the product. Thus, a higher satisfaction rating is likely to mean higher consumer loyalty and a lower satisfaction rating is likely to mean lower consumer loyalty. At the time of the invention, it would have been obvious to a person of ordinary skill in the art for the ratings of Klingman to include future purchase intent and future word of mouth influence since both feelings are related to the product satisfaction sentiment already submitted by consumers and doing so would help to create a perspective for the ratings and provide more meaningful statistical information

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to interest groups, which is set forth as a goal established by Klingman in col. 12, lines 47-51, thereby enhancing the overall effectiveness of the rating system.

10. Claims 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klingman (U.S. 5,950,172) as applied to claim 16 above, in view of www.zagat.com (archived version dated May 1999).

As per claims 23 and 25, Klingman does not expressly disclose the method as recited in claim 16 wherein the one or more obtained ratings include an indication of volume of purchase of goods or services by the consumer within a product category associated with the business and further comprising obtaining socio-economic data associated with the consumer, wherein the socioeconomic data includes at least one of income of the consumer and occupation of the consumer and combining the obtained ratings and the socio-economic data to obtain a buyer power index associated with the consumer.

www.zagat.com discloses wherein the ratings include an indication of volume of purchase of goods or services by the consumer within a product category associated with the business (pages 4 and 5; zagat.com surveys consumers and asks them about their dining frequency per week and their hotel/resort stays per year.); and further:

a computer-implemented step of obtaining socio-economic data associated with the consumer, wherein the socioeconomic data includes at least one of income of the consumer and occupation of the consumer (page 5; zagat.com surveys consumers on their income and occupation.); and

a computer-implemented step of combining the obtained ratings and the socio-economic data to obtain a buyer power index associated with the consumer (pages 5 and 34; zagat.com provides a drop-down menu for consumers to select the income category, or the buying power index, the consumer best matches.).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art for the rating system of Klingman to obtain the consumer socio-economic data as performed in the www.zagat.com system because doing so establishes profiles for the consumers providing the ratings, which helps to create a perspective for the ratings and provide more meaningful statistical information to interest groups, which is set forth as a goal established by Klingman in col. 12, lines 47-51, thereby enhancing the overall effectiveness of the rating system.

As per claim 24, Klingman does not expressly disclose the method as recited in claim 23, wherein the one or more obtained ratings further comprise an indication of the business' share of the volume of purchase by the consumer of goods or services within the product category. www.zagat.com discloses ratings comprising an indication of the business' share of the volume of purchase by the consumer of goods or services within the product category (page 7; zagat.com provides listings of the top "Ten Most Popular" restaurants, which is an indication of the restaurants' share of volume of purchases by consumers.). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the rating system of Klingman with the rating system of www.zagat.com for the reasons set forth in the rejection of claim 23 above (i.e., in

order to provide more meaningful statistical information, thereby enhancing the overall effectiveness of the rating system).

As per claim 26, Klingman does not expressly disclose the method as recited in claim 25, wherein the one or more obtained ratings further include an indication of frequency of purchase by the consumer of goods or services provided by the business. www.zagat.com discloses ratings including an indication of frequency of purchase by the consumer of goods or services provided by the business (pages 4 and 5; zagat.com surveys consumers and asks them about their dining frequency per week and their hotel/resort stays per year.). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the rating system of Klingman with the rating system of www.zagat.com for the reasons set forth in the rejection of claim 23 above (i.e., in order to provide more meaningful statistical information, thereby enhancing the overall effectiveness of the rating system).

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Anderson et al. (U.S. 6,078,892) discusses a method for customer lead selection;
- Jacobi et al. (U.S. 6,064,980) discusses a system and method for collaborative recommendations; and

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- Archived version of www.bizrate.com, January 1999 [retrieved from www.archive.org] discusses website that allows consumers to rate businesses using a variety of ranking criteria.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Michelle Tarae (formerly, C. Michelle Colon) whose telephone number is 571-272-6727. The examiner can normally be reached Monday – Friday from 8:30am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached at 571-272-6729.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this action should be mailed to:

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703-872-9306 [Official Communications; including After Final
communications labeled "Box AF"]

571-273-6727 [For status inquiries, draft communication, labeled
"Proposed" or "Draft"]

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Susanna Diaz
SUSANNA M. DIAZ
PRIMARY EXAMINER
AU 3623

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May 6, 2005